

SENATE BILL 1888

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 62 and Title 68, Chapter 221, to enact the "Tennessee Soil Scientist Licensing and Regulatory Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Soil Scientist Licensing and Regulatory Act".

SECTION 2. Tennessee Code Annotated, Title 62-18-101, is amended by adding the following language as new subsection (c):

(c) Except as otherwise provided in this chapter, it is unlawful for any person to act as a soil scientist without having first obtained a license from the board.

SECTION 3. Tennessee Code Annotated, Section 62-18-102, is amended by deleting item (1) in its entirety and by substituting instead the following language:

(1) "Board" means the state board of examiners for land surveyors and soil scientists, provided for by this chapter;

SECTION 4. Tennessee Code Annotated, Section 62-18-102, is further amended by adding the following language as appropriately designated items:

() "Soil scientist" means a person who interprets soils using the science of soil classification per *Soil Taxonomy*;

() "Soil scientist advisory committee" means the committee appointed by the board of examiners for land surveyors and soil scientists pursuant to § 62-18-138, which is composed of licensed, practicing soil scientists and is responsible for advising the board on matters relating to the soil scientist community;

SECTION 5. Tennessee Code Annotated, Section 62-18-103, is amended by deleting the section in its entirety and by substituting instead the following language:

(a)

(1) To carry out the provisions of this chapter, there is hereby created a state board of examiners for land surveyors and soil scientists. This board shall consist of four (4) members to be appointed by the governor under the conditions described as follows: initially the governor shall appoint on the board three (3) land surveyors, qualified as herein required, one (1) of whom shall come from each of the three (3) grand divisions, designating one (1) of those persons to serve for a period of two (2) years, one (1) for a period of four (4) years and one (1) for a period of six (6) years, and the governor shall appoint on the board one (1) soil scientist, qualified as herein required for a period of four (4) years.

(2) Shortly before the expiration of the term of each member, a successor shall be appointed from the same grand division; provided, that the soil scientist member may be appointed from any grand division.

(3) The term of office of all members shall begin on July 1 following their appointment, except those appointed to fill vacancies, but each member shall hold office until a successor is appointed and qualified.

(4) Each appointment other than the soil scientist member after the first shall be for a period of six (6) years. Each appointment of the soil scientist member after the first shall be for a period of four (4) years.

(b) The board herein created is attached for administrative purposes to the division of regulatory boards in the department of commerce and insurance.

(c)

(1)

(A) All land surveyor appointments made to the board shall be made by the governor from a list of three (3) registered land surveyors recommended by

the Tennessee Association of Professional Surveyors, which list shall be submitted at least sixty (60) days before the expiration of any term or, in the case of vacancies occurring during terms of office, within thirty (30) days following the occurrence of any such vacancy.

(B) The governor shall have the right to return the list to the board and request an additional list of three (3) names from the Tennessee Association of Professional Surveyors until the governor determines a nominee is satisfactory.

(2)

(A) All soil scientists appointments made to the board, after the initial soil scientist member, shall be made by the governor from a list of three (3) licensed soil scientists recommended by the soil scientists advisory committee, in consultation with the soil scientist association of Tennessee, which list shall be submitted at least sixty (60) days before the expiration of any term or, in the case of vacancies occurring during terms of office, within thirty (30) days following the occurrence of any such vacancy.

(B) The governor shall have the right to return the list to the committee and request an additional list of three (3) names from the soil scientists advisory committee, in consultation with the soil scientist association of Tennessee, until the governor determines a nominee is satisfactory.

(3) In making appointments to the board under the authority of this section or under the authority of § 62-18-104, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(d)

(1) The three (3) land surveyor members of the board shall each have had at least ten (10) years' experience in the practice of land surveying and shall have been in responsible charge of work for at least five (5) years. The soil scientist member of the board shall have had at least ten (10) years' experience in the practice of soil science and shall have been in responsible charge of work for at least five (5) years.

(2) Each member of the board shall be a citizen of the United States and shall have been a resident of Tennessee for five (5) years at the time of appointment, and shall be at least thirty-five (35) years of age.

(e) The governor may remove any member of the board for misconduct, incapacity or neglect of duty.

SECTION 6. Tennessee Code Annotated, Section 62-18-104, is amended by adding the language "or in the practice of soil science" to the end of the first sentence.

SECTION 7. Tennessee Code Annotated, Section 62-18-105(b), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(b) No person shall be eligible for land surveyor membership on the board who does not at the time hold an unexpired certificate to practice land surveying issued under this chapter.

SECTION 8. Tennessee Code Annotated, Section 62-18-106(d), is amended by deleting the first sentence and by substituting instead the following language:

(d) The board has the authority to establish continuing educational requirements and standards for land surveyors and for soil scientists. The soil scientists advisory committee shall recommend curriculum for such continuing education.

SECTION 9. Tennessee Code Annotated, Section 62-18-106, is amended by adding the following language as a new subsection:

(f) Every licensed soil scientist must complete sixteen (16) hours of continuing education approved by the board annually as a prerequisite for continued operation in this state. At least eight (8) hours of such continuing education shall be from field exercises. Proof of such continuing education shall be forwarded to the board by December 15 of each year. The board may establish a reasonable fee for the review of continuing education classes.

SECTION 10. Tennessee Code Annotated, Section 62-18-107(a), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(a) The secretary of the board shall receive and account for all moneys derived under the provisions of this chapter, including all fees associated with soil scientists' licensure, and shall deposit the same into the state treasury as provided by law.

SECTION 11. Tennessee Code Annotated, Section 62-18-108, is amended by adding the following language as new subsections:

(d) The board shall keep a record and register of all applicants for a soil scientist license, showing for each the date of application, name, age, educational and other qualifications, place of business and place of residence, whether or not the applicant passed required written and field testing, whether a license was issued, and the date of such action.

(e) A roster showing the names and places of business and of residence of all licensed soil scientists shall be prepared by the secretary of the board each year. Such roster may be printed out of the funds of the board as provided in § 62-18-107.

SECTION 12. Tennessee Code Annotated, Title 62, Chapter 18, Part 1, is amended by adding the following new sections:

§ 62-18-128.

(a) An application for a soil scientist license shall be filed with the board on the prescribed form. The application shall include:

- (1) The full name and business address of the applicant;
  - (2) The name under which the applicant intends to do business;
  - (3) The address of the principal place of business and all branch offices of the applicant within this state;
  - (4) As to each individual applicant, the following information:
    - (A) Full name;
    - (B) Date and place of birth;
    - (C) All residences during the immediate past five (5) years;
    - (D) All employment or occupations engaged in during the immediate past five (5) years;
    - (E) Three (3) credit references from lending institutions or business firms with whom the subject has established a credit record; and
    - (F) A list of all convictions and pending charges of commission of a felony or misdemeanor in any jurisdiction; and
  - (5) Such other information as the board may reasonably require.
- (b) The application shall be subscribed and sworn to by the applicant.
- (c) Any individual signing the application must be at least eighteen (18) years of age.

§ 62-18-129.

Each individual applicant must:

- (1)
  - (A) Be at least twenty-one (21) years of age if applying for an active soil scientist license; or

(B) Be at least eighteen (18) years of age if applying for a soil scientist intern license;;

(2) Be a citizen of the United States or a resident alien;

(3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant competent;

(4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;

(5) Be of good moral character; and

(6)

(A) If applying for an active soil scientist license, possess at least a bachelor of science degree, including at least fifteen (15) semester hours of soil science credits; or

(B) If applying for a soil scientist intern license, be enrolled in an accredited college or university in pursuit of a bachelor's degree;

(7)

(A) If applying for an active soil scientist license:

(i) Possess a bachelor of science degree and at least three (3) years of employment experience in soil sciences;

(ii) Possess a master of science degree and at least two (2) years of employment experience in soil sciences; or

(iii) Possess a doctor of philosophy and at least one (1) year of employment experience in soil sciences; or

(B) If applying for an soil scientist intern license, be enrolled in an accredited college or university in pursuit of a bachelor's degree;

(8)

(A) Be an active and practicing soil scientist who is included on the certified list maintained by the division of water quality on December 31, 2005, or who is added to such list on or before July 1, 2007, with has no adverse judgments against such soil scientist; or

(B) Pass a written test administered by the board, consisting of specific questions about soil taxonomy and a field test conducted on 1:1200 survey plats; and

(9) Complete a minimum of sixteen (16) professional development hours annually, including at least eight (8) hours occurring in the field in the state.

§ 62-18-130.

(a) Upon receipt of an application for a license, the board shall:

(1) Conduct an investigation to determine whether the statements made in the application are true; and

(2) Schedule, administer and assess a written test and a field test to each applicant in accordance with rules and regulations promulgated by the commissioner, unless otherwise exempted from such test by § 62-18-129(8)(A).

(b) The board shall issue a license, in a form which the board shall prescribe, to qualified applicants upon receipt of a nonrefundable, nonproratable fee in accordance with the schedule promulgated by the board.

(c) The board may issue the following licenses, with the criteria for each to be determined by rule:

(1) Active soil scientist;

(2) Inactive soil scientist; and

(3) Soil scientist intern.



(d) If an application for a license is denied, the board shall notify the applicant in writing and shall set forth the grounds for denial. If such grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the required correction.

(e) An application shall be accompanied by a notarized statement sworn to by the applicant as to the number of employees in service. Making a false statement shall be punishable by a civil penalty not to exceed one thousand dollars (\$1,000) and assessment of the maximum application fee.

§ 62-18-131.

Every license issued under this chapter shall be posted conspicuously in the licensee's principal place of business in this state; and an official copy of such license shall be in the possession of each licensed soil scientist engaged in the business of a soil scientist.

§ 62-18-132.

No soil scientist license shall be transferable or assignable.

§ 62-18-133.

(a) A soil scientist license, or renewal thereof, shall be valid for a period of two (2) years from the date of issuance. The board shall provide each licensee with a renewal application form sixty (60) days prior to the expiration of the license.

(b) The fee for timely renewal of a license shall be in accordance with the schedule promulgated by the board. A penalty fee as prescribed by the board will be assessed on any renewal application postmarked after the expiration date of the license.

(c) Licenses may be renewed up to three (3) months after their expiration by the payment of the renewal fee, plus a penalty established by the board for each month or portion thereof which elapses before payment is tendered.

(d) A renewal application shall be accompanied by a notarized statement sworn to by the applicant as to the number of employees in service. Making a false statement shall be punishable by a civil penalty of two hundred fifty dollars (\$250) and assessment of the maximum renewal fee.

§ 62-18-134.

A licensee shall notify the board in writing within thirty (30) days of:

(1) Any material change in the information previously furnished or required to be furnished to the board; or

(2) Any occurrence which could reasonably be expected to affect the licensee's right to a license under this part.

§ 62-18-135.

Each practicing, active soil scientist shall obtain and maintain errors and omissions insurance evidencing general liability coverage for the negligent act or acts of the principal insured or the principal insured's agents operating in the course and scope of employment, in the minimum amount of two hundred fifty thousand dollars (\$250,000). In lieu of such errors and omissions insurance, a soil scientist may obtain a performance bond, or an irrevocable letter of credit, in the amount of thirty thousand dollars (\$30,000), for the benefit of any person who hires the soil scientist and is damaged because of any negligence or fraud by the soil scientist. Any person so damaged may sue directly on the bond without assignment of the bond. Liability under any such bond may not exceed, in the aggregate, the amount of the bond. The insurance shall not be modified or cancelled without thirty (30) days' prior notice to the board. All persons required to be insured by this chapter must be insured by a carrier approved in the state in which the insurance has been purchased or in this state.

§ 62-18-136.

(a) Except as otherwise provided in this chapter, it is unlawful for any individual to act as a soil scientist without having first obtained a license from the board.

(b) Any individual who holds a valid soil scientist license may act as a soil scientist thereunder.

§ 62-18-137.

The license shall be exhibited upon request of the board, or the board's designee, to verify that the soil scientist is working pursuant to the requirements of this chapter.

§ 62-18-138.

(a) The board shall be responsible for administering and enforcing the provisions of this chapter.

(b) The board, acting through the commissioner of commerce and insurance, may promulgate such rules as are reasonably necessary to effectuate the purposes of this chapter. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner of commerce and insurance shall, as authorized by § 4-5-205, appoint an advisory committee of experts in the field of soil science to advise the commissioner with respect to any contemplated rulemaking under this section. Such committee shall be known as the "soil scientists advisory committee". Such committee may make formal recommendations to the commissioner or the general assembly.

(d) The board may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter, or of any rule promulgated hereunder. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

(e) The board may at all reasonable hours conduct inspections/investigations of soil scientists to ensure compliance with this chapter.

§ 62-18-139.

(a) The board may take disciplinary action against a licensee or applicant, deny an application for a license, or may suspend, revoke, or refuse to issue or renew any license hereunder upon finding that the holder or applicant has:

(1) Violated any provision of this chapter, or any rule promulgated hereunder;

(2) Practiced fraud, deceit or misrepresentation;

(3) Knowingly and willfully made a material misstatement in connection with an application for a license;

(4) Been convicted by a court of competent jurisdiction of any felony or of a misdemeanor, if the board finds that such conviction reflects unfavorably on the fitness for such license;

(5) Committed any act which would have been cause for refusal to issue such license had it existed and been known to the board at the time of issuance;

(6) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(7) Willfully deceived or defrauded a member of the public being protected;

(8) Acted as a soil scientist without a currently valid license;

(9) Violated any disciplinary order of the board; or

(10) Failed or refused to cooperate with any inspection or investigation to determine compliance with this chapter or rules and regulations promulgated pursuant thereto.

(b) In addition to or in lieu of any other lawful disciplinary action under this section, the board may assess a civil penalty of up to two thousand dollars (\$2,000) for each statute or rule violation.

(c) The board may assess a civil penalty of up to two thousand dollars (\$2,000) per occurrence upon any person who operates without the proper license or other authorization required.

(d) A license card shall be subject to expiration and renewal during any period in which such license is suspended.

§ 62-18-140.

Except as otherwise provided in this chapter, or in any rule or regulation promulgated pursuant thereto, a violation of this chapter, or any rule promulgated hereunder relating to the practice of soil science, is a Class A misdemeanor.

§ 62-18-141.

No city, county, or urban county government shall occupy any part of the field of regulation of soil scientist services unless expressly provided for herein or approved by the commissioner of environment and conservation acting pursuant to § 68-221-403.

SECTION 13. Tennessee Code Annotated, Section 68-221-403, is amended by deleting the language "soil scientist" wherever such language appears and by substituting instead the language "licensed soil scientist".

SECTION 14. Tennessee Code Annotated, Section 68-221-403, is further amended in subdivision (c)(7) by deleting the language "certified by the department" in its entirety.

SECTION 15. Tennessee Code Annotated, Section 68-221-403, is further amended in subsection (g) by deleting the language "certified by the department" wherever such language appears.

SECTION 16. This act shall take effect January 1, 2008, the public welfare requiring it.

